



## ADJUNCT FACULTY APPOINTMENTS PROCEDURES FOR COMPLIANCE WITH THE AFFORDABLE CARE ACT, THE MANPOWER CONTROL PROGRAM, AND THE FAIR LABOR STANDARDS ACT

### Introduction

At Virginia Commonwealth University (VCU), there are several federal and state laws governing restrictions on work hours and salary provisions for non-benefited employees, including adjunct employees. The following procedures provide guidance for those employing adjunct faculty to ensure compliance with the key provisions of the Department of Health and Human Services' Affordable Care Act (ACA), the Commonwealth of Virginia's Manpower Control Program (MCP), and the U.S. Department of Labor's (DOL) Fair Labor Standards Act (FLSA) as noted below:

### Background

To provide administrative guidance, the Internal Revenue Service (IRS) issued a regulation on the "Shared Responsibility for Employers Regarding Health Coverage", that requires specific employers to offer health care benefits to employees who work thirty (30) hours or more per week, on average, over a twelve (12) month period. This regulation is part of the federal ACA, requiring employers to ensure that health care benefits have been offered to employees working thirty (30) hours or more per week, on average, over a twelve (12) month period.

On February 4, 2013, the Governor of Virginia's Chief of Staff instructed all executive branch agencies, including VCU, to begin limiting the number of hours worked by wage and hourly employees to no more than twenty-nine (29) hours, on average, per week, or less.

In addition, the Commonwealth of Virginia's budget (section of the MCP) was amended on April 3, 2013 and revised in 2014, to include language specifically addressing how the Commonwealth will ensure compliance with the ACA as it applies to limiting the hours worked by adjunct faculty in institutions of higher education. The amendment language states: *Adjunct faculty at institutions of higher education may not work more than 29 hours per week on average over a twelve month period, including classroom or other instructional time plus additional hours determined by the institution as necessary to perform the adjunct faculty's duties.*

In February 2014, the IRS provided additional guidance on a "reasonable" method to calculate instructional adjunct hours. The language states, in part: *One (but not the only method) that is reasonable for this purpose would credit an adjunct faculty member of an institution of higher education with (a) 2 1/4 hours of service (representing a combination of teaching or classroom time and time performing related tasks such as class preparation and grading of examinations or papers) per week for each hour of teaching or classroom time (in other words, in addition to crediting an hour of service for each hour teaching in the classroom, this method would credit an additional 1 1/4 hours for activities such as class preparation and grading) and, separately (b) an hour of service per week for each additional hour outside of the classroom the faculty member spends performing duties he or she is required to perform (such as required office hours or required attendance at faculty meetings).*

The Commonwealth's Department of Human Resource Management (DHRM) developed guidelines for state agencies on complying with the provisions of the MCP as it relates to the twenty nine (29) hour restrictions. Guidance includes information on wage, variable, and seasonal employment, as well as adjunct faculty appointments. DHRM consulted with VCU and other institutions of higher education to develop a methodology for calculating hours worked by adjunct faculty. As part of this

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discussion, it was determined that each institution of higher education is considered its own “employer” and could develop their own methodology for calculating hours worked by adjunct faculty. In addition, the Commonwealth has directed that the *Standard Measurement Period* for employees is May 1 through April 30 of the following year. This means that between the measurement period of May 1 and April 30 employees in an adjunct appointment(s) may not work more than 29 hours per week, on average. In order to ensure compliance with these hourly restrictions, VCU is restricting the hours worked during the *Standard Measurement Period* to no more than **1,480** hours. The recommendations provided below are based on DHRMs’ guidance as well as that provided by VCU’s University Counsel’s Office.

In May of 2016, the DOL issued its final ruling on the salary threshold for positions that qualify for “exempt” status under the FLSA. While positions that are instructional (credit and non-credit) are exempt under the FLSA, any adjunct appointment that is not instructional must be reviewed prior to any appointment being offered to ensure it meets both the salary threshold of at least \$47,476 (\$913/week) and the appropriate “job duties” test.

Based on the laws and guidance provided above, below are the procedures to be followed at VCU **before** offering an adjunct appointment. These procedures apply to both instructional (credit and non-credit) and non-instructional adjunct faculty appointments.

### **Key Definitions**

VCU’s Definition of Adjunct Faculty (from VCU’s Faculty Handbook)

**Adjunct Faculty:** Adjunct faculty appointments are granted to faculty who serve the University part-time and are employed for specific activities and do not lead to tenure. (Note: Adjunct faculty are temporary appointments for up to one year, but may be renewed.)

### **Calculation of Hours Worked Per Credit Hour**

In order to ensure adjunct faculty are not working more than 29 hours per week, on average, during the *Standard Measurement Period*, a baseline calculation was developed to determine how many work hours equates to one (1) credit hour for instructional adjuncts. Using the guidance by the IRS, a one (1) credit course equals approximately 3.25 hours of work per week, which includes one (1) hour of classroom instruction, one and a quarter (1.25) hours of work outside the classroom (prep time, grading, etc.), plus one (1) additional hour each week for attendance at meetings and office hours. Therefore, a three (3) credit course equals approximately nine and three quarter (9.75) hours of work per week.

Accordingly, adjuncts teaching Fall and Spring semesters would only be allowed to teach up to eighteen (18) credit hours, which equates to no more than nine (9) credit hours per semester. Additionally, if adjuncts teach Fall, Spring, and Summer semesters, then only up to twenty-four (24) credit hours only would be allowed, which equates to no more than nine (9) credit hours in each of the Fall and Spring semesters and up to six (6) credit hours in the Summer semester.



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The credit hours adjunct faculty teach during intersession will be counted towards the twenty four (24) hour credit limit.

|  | <b>Fall and Spring</b><br>includes<br>Intercession | <b>Summer Only</b> | <b>Fall, Spring and Summer</b> |
|--|--|--------------------|--------------------------------|
| Maximum Credit Hours Allowable for Adjunct Faculty | 18   | 6                  | 24                             |

**Adjuncts with Instructional Duties Only (Credit and Non-Credit)**

Before any adjunct teaching faculty appointment can be offered, schools/units are responsible for finding out from the prospective adjunct faculty if they have or have had any other adjunct or hourly appointment(s) at VCU during the “Standard Measurement Period”. Schools/units are also responsible for checking to see if the prospective adjunct faculty has had any other adjunct or hourly appointment(s) at VCU by using the “Management of 29 Hours” and the “Management of 29 Hours – Individual Audit” reports in VCU’s Reporting Center.

In order to ensure adjunct faculty appointments will not exceed the maximum allowable credit hours (as shown in the chart above) during the “Standard Measurement Period”, the credit hours for each adjunct faculty with instructional duties are to be used to track all adjunct hours worked. To assist schools/units in making sure hours worked are in compliance with the MCP, HR has developed an [Adjunct Contract Calculator](#), which will determine the total hours worked based on the credit hours taught (see section below on recording of FTE%).

**Note:** Adjunct faculty whose duties are instructional (either credit or non-credit) are considered exempt under FLSA. Accordingly, adjunct teaching faculty are not required to be paid for overtime and do not have to meet a salary threshold, as noted below for non-teaching adjunct appointments.

**Adjuncts Without Any Instructional Duties (i.e. primary administrative duties)**

Before a non-teaching adjunct appointment can be issued, there are two important **criteria that must be met:**

(1.) To ensure compliance with the provisions of the FLSA, appointments to a non-teaching adjunct faculty position are very limited and can only be contemplated where the position (not the person) meets both the “salary basis test” and the “job duties test” under the FLSA. **The minimum salary of the position must be at least \$47,476 per year (\$913 per week).** Since there are job and salary requirements for these appointments, there is a special review and approval process including review by HR and the respective VP before these appointments can be offered.

For more information on requesting these types of appointments, refer to the [Procedures for Processing Non-Teaching Adjunct Appointments](#) and the [Adjunct Faculty Non-Teaching](#) PD form.

(2.) If a non-teaching adjunct appointment is approved as meeting the criteria above, the adjunct faculty member is still restricted to working no more than 29 hours per week, on average and no



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more than 1,480 hours during the *Standard Measurement Period*, which equates to no more than 70.63%. Accordingly, if a non-teaching adjunct appointment is approved, schools/units are responsible for finding out from the prospective adjunct faculty if they have or have had any other adjunct or hourly appointment(s) at VCU during the “Standard Measurement Period”. Only then can a contract be issued. Schools/units are also responsible for checking to see if the prospective adjunct faculty has had any other adjunct or hourly (non-benefited) appointment(s) at VCU by using the “Management of 29 Hours” and the “Management of 29 Hours – Individual Audit” reports in VCU’s Reporting Center.

### **IMPORTANT NOTES:**

**The FTE% on contracts for non-instructional adjunct appointments should match the FTE% on the corresponding personnel action (part of the Adjunct Non-Teaching PD form).**

When using the [Adjunct Contract Calculator](#) for processing a 12-month non-teaching adjunct appointment, **do not enter more than 28 hours per week**. See section below on recording of FTE%.

**Overload jobs for non-teaching adjunct positions** are not permitted except if the duties are instructional. This is to ensure compliance with the provisions of the FLSA.

### **Adjuncts Who Have Been Authorized for Additional Part-Time Non-Benefited Position(s)**

Adjunct faculty are not allowed to accept additional employment in another part-time, non-benefited position (adjunct or hourly) at VCU unless they have been authorized to do so by the respective hiring authorities. **Overload jobs for non-teaching adjunct positions** are not permitted except if the duties are instructional. This is to ensure compliance with the provisions of the FLSA.

Any secondary assignment that is not primarily instructional may require an appointment to an hourly position. If the adjunct faculty member is permitted to hold more than one, part time position (adjunct or hourly), the total combined hours for all part-time, non-benefited positions held during the *Standard Measurement Period* cannot exceed more than twenty nine (29) hours per week on average and no more than 1,480 hours per year. If at any time during the *Standard Measurement Period* it is determined that the projected hours might exceed this hourly limit, the employee’s hours must be reduced and/or the adjunct position may be subject to earlier termination.

Accordingly, the combined workload (credit hours plus hours worked per week) must not exceed **1,480** hours per year or, on average, no more than 70.63% FTE over the course of the “Standard Measurement Period” (see below regarding the recommendations on the monitoring of hours worked).

Before an adjunct contract or “overload” for an adjunct appointment can be issued, schools/units are responsible for finding out from the prospective adjunct faculty if they have or have had any other adjunct or hourly appointment(s) at VCU during the “Standard Measurement Period”.



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Schools/units are also responsible for checking to see if the prospective adjunct faculty has had any other adjunct or hourly appointment(s) at VCU by using the “Management of 29 Hours” and the “Management of 29 Hours – Individual Audit” reports in VCU’s Reporting Center.

### Adjuncts With a Combination of Instructional and Other Non-Instructional Duties

To ensure compliance with the FLSA as well as the hourly restrictions under the ACA, follow the review/approval procedures above for the administrative (non-teaching) adjunct appointment. If a non-teaching adjunct appointment is approved and the adjunct faculty member also has another instructional adjunct position, there should be a separate contract issued for each of the functions, one for teaching duties and one for administrative duties. This will also require a separate personnel action for each appointment.

### Contract Issuance/Renewals for Adjunct Faculty

Any contract issued to an adjunct faculty member **must** be accompanied the most current *Adjunct Faculty Terms and Conditions* document. This document outlines the employee’s responsibilities for complying with the work hour restrictions under the MCP, the limitation on accepting more than one non-benefited position, and the specific requirements for non-teaching adjunct appointments under the FLSA.

### Recording of FTE% and Hours Worked on Personnel Actions

Each school/unit is responsible for ensuring that when adjunct faculty are appointed (either in a new or continuing appointment), the [Personnel Action Form](#), ePAF, [Adjunct Faculty Non-Teaching PD form](#), and/or [Overload Job Request](#) forms submitted in the HR Banner system has the correct FTE% (based on credit hours and/or hours worked per week for each adjunct position). The FTE% on contracts for non-instructional adjunct appointments should match the FTE% on the corresponding personnel action.

Accordingly, the [Adjunct Contract Calculator](#) **must be used** to determine the total hours worked based on the credit hours taught or hours worked per week. See the [Adjunct PAF instructions](#) on how to fill out the Adjunct Contract Calculator.

The FTE% represents the number of hours per week the adjunct employee is working for that particular appointment. If an adjunct faculty holds more than one appointment (adjunct or hourly) at the same time, the FTE% for each appointment is combined to reflect the total hours worked per week. The total FTE% cannot exceed the credit hour and/or work hour restrictions (described above) during the “Standard Measurement Period”.

The hourly breakdown by semester for PAF processing is as follows:

Spring semester (includes intercession) and Fall semester is 17 weeks  
17 weeks at 40 hours/week = 680 hours per semester

Summer semester is 12 weeks



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12 weeks at 40 hours/week = 480 hours per semester

For consistency in application, 55.25 hours worked per credit hour (including Summer semester) would be used for the calculation to determine how many work hours equates to one (1) credit hour of instruction.

**Note for 12-month non-teaching adjunct appointments:** If 29 hours per week is entered on the adjunct calculator, it will show as an error as the total projected work hours will exceed the maximum allowed hours of 1,480. Since the 29 hours per week is **an average** over the 12-month standard measurement period, the work hours for some weeks may be less than 29 hours. As such, please enter **no more than 28 hours** per week for 12-month, non-teaching adjunct appointments.

### Employees with Primary Faculty Appointments Who Have an Overload Adjunct or Hourly Appointment(s) (i.e. Secondary Job)

The hourly limit under the ACA does not apply to full-time faculty or part-time faculty who are eligible for benefits under the health care plan established by DHRM. Likewise, if a full-time faculty member has a secondary appointment processed as an adjunct or hourly overload, the hourly restriction does not apply to the secondary job(s).

### Responsibility for Compliance with the Manpower Control Program

- Adjunct faculty are responsible for complying with the credit hour and/or work hour restrictions under these procedures and under the MCP. They must disclose any non-benefited (e.g. adjunct or hourly) position they hold or have held at VCU during the “Standard Measurement Period” before accepting any other adjunct appointment. If at any time it appears the adjunct faculty member is expected to exceed the hourly limit, they may be required to reduce hours worked and/or the adjunct contract may be terminated early.
- Before an adjunct contract or “overload” for a teaching or non-teaching adjunct appointment is issued, schools/units are responsible for finding out from the prospective adjunct faculty if they have or have had any other adjunct or hourly appointment(s) at VCU during the “Standard Measurement Period”.
- Prior to offering an adjunct appointment, schools/units are also responsible for checking to see if the prospective adjunct faculty has had any other adjunct or hourly appointment(s) at VCU by using the “Management of 29 Hours” and the “Management of 29 Hours – Individual Audit” reports in VCU’s Reporting Center.

### Assistance with Compliance

HR and OFRR have assisted schools/units in developing or revising forms, processes, and/or reports to facilitate compliance. Some of these tools include the following:

- Adding additional required reporting fields to the PAF, ePAF, Overload, and [Adjunct Faculty Non-Teaching](#) PD form for adjunct faculty appointments.



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- The reports found in VCU's Reporting Center will also help schools/units to make sure their adjunct faculty are in compliance with the credit/work hour restrictions during the "Standard Measurement Period" of May 1<sup>st</sup> to April 30<sup>th</sup> of the following year.
- If an adjunct faculty is approaching their work/credit hour limit, schools/units will be notified by HR.
- To check the status of adjunct faculty and their hours worked, schools/units can check the "Management of 29 Hours – Individual Audit" reports in VCU's Reporting Center.

### **Questions**

For questions regarding preparing adjunct faculty contracts and assistance with calculating FTE%, contact Kathleen Blankenship, Human Resources Administrator in the OFRR at [blankenshike@vcu.edu](mailto:blankenshike@vcu.edu) or at 804-828-6844 or Carol Ann Irby in the Office of the Vice President for Health Sciences at [irbyca@vcu.edu](mailto:irbyca@vcu.edu) or at 804-828-9776, as applicable.